IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

RAYMOND L. WALKER, JR. PLAINTIFF

VS. CIVIL ACTION NO. 3:17CV189- CWR-LRA

CF INDUSTRIES NITROGEN, LLC,
LABORATORY CORPORATION OF AMERICA
MEDREVIEW, LLC
And JOHN DOES 1-10 DEFENDANTS

PLAINTIFF'S MEMORANDUM IN SUPPORT OF OPPOSITION TO MEDREVIEW LLC'S MOTION TO DISMISS

The Plaintiff, Raymond L. Walker, Jr., by and through the undersigned counsel, respectfully submits this Memorandum in Support of his Opposition to MedReview LLC's Motion to Dismiss [Doc. 8] and would show that, for the reasons stated herein, the motion should be denied.

Introduction

This action arises from the wrongful termination from employment of the Plaintiff, Raymond L. Walker Jr., (hereinafter "Mr. Walker") based upon an inaccurate and/or "false positive" drug test. As to Defendant, MedReview, LLC, Mr. Walker has stated causes of action for negligence and gross negligence, based on MedReview's participation in the analysis, evaluation, and/or reporting of the results of the testing, analysis and/or evaluation of the urine specimen. Mr. Walker seeks an award of actual and consequential for MedReview's negligence, along with punitive damages for its gross negligence.

Background Facts

Raymond L. Walker Jr. (hereinafter "Mr. Walker") was a 23-year employee of the nitrogen facility in Yazoo City, Mississippi, formerly known as Mississippi Chemical Company and now owned and operated by CF Industries Nitrogen, LLC (hereinafter "CFI"). *See* Complaint, [Doc. 1] at ¶ 8-9. Mr. Walker was a shift supervisor at all times relevant to this action. *Id.*

On or about August 24, 2016, at the end of his shift, Mr. Walker, along with several other employees, was asked to submit to a random drug test in keeping with CFI's policies. *Id.* at ¶14. Mr. Walker voluntarily complied and provided a urine specimen to the lab technician who was administering the test. At all times, Mr. Walker followed the instructions and complied with the requests of the lab technician. *Id.* at ¶15.

Upon information and belief, the urine specimen was collected by LabCorp and was sent by LabCorp to MedReview for analysis and confirmation of the results. Upon information and belief, MedReview analyzed or evaluated the specimen using gas chromatography--mass spectrometry.

On or about August 31, 2016, Mr. Walker was contacted by a MedReview representative who advised that his specimen had tested positive for Amphetamines. *Id.* at ¶16. *See also* MedReview's Answer [Doc. 10] at ¶ 16. Mr. Walker informed the representative that there must be a mistake because he had not taken or used any Amphetamines. *See* Complaint at ¶ 17. Mr. Walker reported to the MedReview representative that he suffers from a variety of medical conditions for which he is under treatment by physicians and that he does take a number of prescription medications, including opiates.[1] *Id.* *See also* Answer at ¶ 17. Despite this information and without further investigation, MedReview confirmed the test result and reported the results, indicating a "positive" for Amphetamines, to LabCorp and/or Mr. Walker's employer, CFI. *Id.* at ¶19. Alternatively, MedReview confirmed the test result and transmitted or communicated the same to LabCorp, and LabCorp reported and/or transmitted the "positive" result to CFI.[2]

On or about September 1, 2016, Mr. Walker was terminated from his employment by CF based upon the "positive" report from the August 24, 2016 urine specimen. *Id.* at ¶ 20.

Mr. Walker commenced this action by the filing of his Complaint on March 20, 2017. [Doc. 1]. In response to the Complaint, MedReview filed its Answer [Doc. 10] and the instant Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6).

MedReview has failed to cite a single rule or legal authority in support of its motion. Instead, MedReview posits that it should be dismissed from this action because, it says, "MedReview did not collect or analyze his specimen." MedReview asserts it cannot be liable for claims regarding the collection, documentation, and analysis of Mr. Walker's specimen. But clearly, MedReview evaluated and/or analyzed the specimen and its analysis and/or results were ultimately reported and/or transmitted to CFI, which was the basis for Mr. Walker's wrongful termination.

The Complaint is well-pled and contains factual support for the legal claims and bases for recovery set out therein. MedReview's motion fails and should be denied.

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[1] The test results were "negative" for all other substances screened, including opiates. *See* MedReview Answer at ¶17.

[2] Because Mr. Walker was not privy to the communications and relationships between LabCorp and MedReview and CFI, these allegations are made upon information and belief and are expected to be fleshed out in discovery.

The Rule 12(b)(6) Standard

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) tests the legal and factual sufficiency of a plaintiff's complaint. *See Young v. U.S. Bank Nat. Ass'n*, 2015 WL 1242046, at *1 (N.D. Miss., Mar. 18, 2015) (*citing Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). The purpose is not to test the merits or resolve disputes as to facts. *Mello v. Sara Lee Corp.*, 292 F. Supp. 2d 902, 904 (N.D. Miss., 2003) (*quoting* Wright & Miller, Federal Practice and Procedure: Civil 2d § 1356)). Motions to dismiss are "viewed with disfavor and rarely granted." *Collins v. Morgan Stanley Dean Witter,* 224 F.3d 496, 497 (5th Cir. 2000). *See also Mello,* 292 F. Supp. 2d at 904-05 (internal citations omitted) ("Such motions . . . are rarely granted and generally viewed with disdain.").

Here, the Plaintiff's Complaint meets the pleading requirements of Fed. R. Civ. P. 8(a)(2), requiring a "short and plain statement . . . showing that the pleader is entitled to relief." Based upon the facts outlined above and set out in his Complaint, Walker has plead a cause of action against MedReview for Negligence. *See* Complaint [Doc. 1] at Count III, ¶¶ 40-47. Specifically as to MedReview, Mr. Walker alleges MedReview negligently failed to ensure that the specimen was in fact Mr. Walker's. *Id.* at ¶ 43. Further, Mr. Walker alleges that MedReview failed to take into account relevant information regarding Mr. Walker's prescription medications and all other relevant medical information, when interpreting and/or reporting the positive results. *Id.* In paragraph 44, Mr. Walker alleges that MedReview was negligent in: (a) failing to disclose material facts in connection with the drug test and results; (b) disclosing unreliable, inaccurate, and unconfirmed test results; (c) failing to investigate and disclose the circumstances of a false positive; and (d) failing to properly and adequately inform CFI, the employer, of the circumstances under which the false positive could result. *Id.* at ¶ 44(a)-(d).

Mr. Walker alleges that he was terminated based upon the faulty, unreliable, and/or inaccurate test result report and that, as a result of MedReview's negligence, Mr. Walker has suffered damages. *Id.* at ¶¶ 45, 47.

Mr. Walker's Complaint contains sufficient factual matter to support his claims and causes of action for negligence and gross negligence against MedReview. Mr. Walker's Complaint is well-pled and, taking all factual allegations as true, "state[s] a claim to relief that is plausible on its face." *See Ashcroft*, 556 U.S. at 678.

Mr. Walker has met his burden to demonstrate that his claim should go forward by demonstrating facts that allow the Court "to draw a reasonable inference that [MedReview] is liable for the misconduct alleged." *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555 (2007); *see also See Collins v. Morgan Stanley Dean Witter,* 224 F.3d 496, 497 (5th Cir.2000). This is neither the time nor the place to weigh the facts or resolve conflicts as to the merits of the case. "The purpose of a motion under Rule 12(b)(6) is to test the formal sufficiency of the statement of the claim for relief; it is not a procedure for resolving a contest about the facts or the merits of the case." *Mariner Healthcare, Inc. v. Puffer,* 2005 WL 1711665 *1, *1 (N.D. Miss., July 21, 2005) (*citing, e.g., Murray v. Amoco Oil Co.,* 539 F.2d 1385 (5th Cir.1976)) (emphasis added). *See also Mello*, 292 F. Supp. 2d at 904 (*quoting* Wright & Miller, Federal Practice and Procedure: Civil 2d § 1356)).

Here, MedReview, as the movant under Fed. R. Civ. P. 12(b)(6), has failed to meet its burden. "It is upon the party moving for dismissal to prove an absence of a claim." *Mello,* 292 F. Supp. 2d at 904 (*citing Beck v. Deloitte & Touche*, 144 F.3d 732 (11th Cir. 1998) *also citing* Wright & Miller, Federal Practice and Procedure: Civil 2d § 1357)). *See also Lebron v. Ashford Presbyterian Community Hosp.*, 995 F. Supp. 241, 243 (S.D.P.R. 1998) (*citing* 5A Wright &

Miller, *Fed. Prac. & Proc.*, § 1356 at 115 (2d ed. 1990); *also citing Clapp v. LeBoeuf, Lamb, Leiby & MacRae*,, 862 F. Supp. 1050 (S.D.N.Y. 1994)) (holding "It is the moving party which has the burden of proving that no claim exists."). MedReview has failed to show that no claim exists and its motion should be denied.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff, Raymond L. Walker, Jr., respectfully requests that the Court enter an order denying MedReview, LLC's Motion to Dismiss, with all costs assessed against the Defendant, MedReview, LLC. The Plaintiff respectfully requests such other relief as the Court deems appropriate in the alternative.

THIS the 12th day of May, 2017.

Respectfully submitted,

/s/ Ginny Y. Kennedy
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CERTIFICATE OF SERVICE

I, Ginny Y. Kennedy, of counsel for the Plaintiff, do hereby certify that I have this day served via the court's electronic filing system a true and correct copy of the above and foregoing to:

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THIS the 12th day of May, 2017.

/s/ Ginny Y. Kennedy
GINNY Y. KENNEDY